

AARON E. COLYER)
)
v.) NO. 2:05-CV-)
)
SULLIVAN COUNTY, TENNESSEE)
SHERIFF'S DEP'T¹)

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The petitioner alleges that, on April 30, 2004, pursuant to his guilty pleas, he was convicted in the Sullivan County Criminal Court of possession of over ½ ounce of marijuana for resale (Count one) and of possession of drug paraphernalia (Count two). On July 15, 2005, the petitioner received a one-year prison term at 30% on the first count; "01 days" on the second count; and alternative sentencing placement. (Pet. at ¶¶ 2 and 3).

A petitioner cannot seek a writ of habeas corpus until he demonstrates that he has exhausted his available state remedies or that resort to them would be useless. 28 U.S.C. §2254 (b)(1) and (c); *Rose v. Lundy*, 455 U.S. 509 (1982). It is a petitioner's burden to show exhaustion of available state court remedies. *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir.1994). The exhaustion principles apply here. A post-conviction remedy is offered to Tennessee's prisoners who wish to obtain collateral review of their convictions. See Tenn. Code. Ann. § 40-30-101 et seq. Since the petitioner has never sought post-conviction relief² and since, seemingly, a post-conviction action offers him an available state court avenue for

² He avers that he filed a state application for habeas corpus relief; that it was denied on May 4, 2005; and that he has not filed an appeal because he does "not know how" and does "not have counsel."

redress of his claims of illegal confinement,³ it does not appear that he has exhausted his state court remedies. At any rate, it is the petitioner who bears the burden of showing exhaustion of state remedies and he has not borne it.

Accordingly, this § 2254 action will be **DISMISSED** without prejudice for non-exhaustion of state remedies. 28 U.S.C. § 2254.

A separate order will enter.

ENTER:

s/Thomas Gray Hull

THOMAS GRAY HULL
SENIOR U. S. DISTRICT JUDGE

³ Tenn. Code Ann. § 40-30-102 provides, in relevant part, as follow:

"[A] a person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of such petition shall be barred."